

FILED

APR 11 2019

Clerk, U.S. Courts
District Of Montana
Missoula Division

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

JESSE LEE SACKETT,

Petitioner,

vs.

LYNN GUYER,

Respondent.

CV 19-4-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered his Findings and Recommendations on March 14, 2019, recommending that the Court dismiss Petitioner Jesse Lee Sackett's petition brought under 28 U.S.C. § 2254 and deny a certificate of appealability. (Doc. 14.) Sackett failed to timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149-53 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been made." *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

Having reviewed the Findings and Recommendation (Doc. 14), the Court

finds no clear error in Judge Johnston's recommendation that Sackett's petition be denied as untimely and procedurally barred. Judge Johnston reasonably determined that Sackett did not comply with AEDPA's one-year statute of limitations when he filed his petition over twenty years after the limitation period began to run. *See* 28 U.S.C. § 2244(d)(1). There is no clear error in Judge Johnston's finding that Sackett failed to act diligently such that the statute should be equitably tolled. *See Porter v. Ollison*, 620 F.3d 952, 959 (9th Cir. 2010). Nor is there clear error in the finding that Sackett failed to exhaust state remedies, rendering his petition procedurally defaulted. *See* 28 U.S.C. § 2254(b)(1).

The Court also adopts Judge Johnston's recommendation that the Court deny a certificate of appealability. Sackett has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Accordingly, IT IS ORDERED:

- (1) Judge Johnston's Findings and Recommendations (Doc. 14) is ADOPTED IN FULL;
- (2) Sackett's Amended Petition (Doc. 6) is DISMISSED;
- (3) A certificate of appealability is DENIED; and
- (4) The Clerk of Court shall enter by separate document a judgment in favor of Respondents and close this case.

DATED this 11th day of April, 2019.



Dana L. Christensen, Chief Judge
United States District Court